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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

THIRD APPELLATE DISTRICT

(Shasta)

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In re KEEGAN D., a Person Coming Under  
the Juvenile Court Law.

DEPARTMENT OF SOCIAL SERVICES,

Plaintiff and Respondent,

v.

MICHAEL M.,

Defendant and Appellant.

C040582

(Super. Ct. No.  
2291401)

Michael M. (appellant), the father of Keegan D. (the minor), appeals from an order of the juvenile court terminating his parental rights. (Welf. & Inst. Code, §§ 366.26, 395; further unspecified statutory references are to this code.) Appellant contends the court erred in finding a statutory exception to adoption did not apply. We disagree with that contention and affirm.

## FACTUAL AND PROCEDURAL BACKGROUND

On August 25, 2000, the Department of Social Services (DSS) filed a section 300 petition on behalf of the one-year-old minor. That petition alleged the mother of the minor was unable to provide regular care for the minor due to her history of substance abuse. The petition did not name a father and averred his identity was unknown.

The juvenile court sustained the petition and adjudged the minor a dependent child. Appellant was identified as the father of the minor and was made a party. The court granted appellant reunification services and awarded him visitation with the minor.

Appellant has a lengthy criminal record, which includes a conviction for solicitation to commit murder. According to a social worker's report, appellant spent a large number of his adult years in custody. The report also stated appellant spent time with the minor's mother after the birth of the minor, until appellant's incarceration when the minor was about 13 months old. At present, appellant is on probation for a firearms conviction.

Until November 2001, when his reunification services ended, appellant visited the minor one time per month. However, appellant missed two scheduled visits. Moreover, on occasion the social worker found it difficult to make contact with appellant.

DSS recommended adoption as the appropriate permanent plan for the minor. The minor was doing well in foster care. He had

been in the same foster home since November 2000. Moreover, the minor's foster parents wanted to adopt him.

At the February 21, 2002, section 366.26 hearing, appellant testified he had taken care of the minor for five or six months. According to appellant, his monthly visits with the minor "generally went great." Appellant also told the juvenile court the minor seemed happy to see him. Appellant believed it would be beneficial to the minor to continue their relationship and detrimental to the minor to end it.

At the conclusion of the hearing, appellant argued a significant relationship existed between the minor and appellant and that the minor would benefit from continuing their relationship. According to appellant, ending the relationship would be detrimental to the minor. The juvenile court disagreed, finding the minor would not benefit from continuing his relationship with appellant. The court also found it would not be detrimental to the minor to terminate appellant's parental rights. The court then ordered appellant's parental rights terminated and the minor placed for adoption.

#### DISCUSSION

Appellant contends the juvenile court lacked sufficient evidence to support its finding that a statutory exception to adoption did not apply. According to appellant, he saw the minor regularly and their interactions were positive. Appellant asserts he met his burden of proving the minor would benefit from continuing their relationship. Therefore, appellant argues, reversal is required.

“At the selection and implementation hearing held pursuant to section 366.26, a juvenile court must make one of four possible alternative permanent plans for a minor child. . . . *The permanent plan preferred by the Legislature is adoption.* [Citation.]’ [Citation.] If the court finds the child is adoptable, it *must* terminate parental rights absent circumstances under which it would be detrimental to the child.” (In re Ronell A. (1996) 44 Cal.App.4th 1352, 1368.)

One of the circumstances under which termination of parental rights would be detrimental to the minor is: “The parents . . . have maintained regular visitation and contact with the child and the child would benefit from continuing the relationship.” (§ 366.26, subd. (c)(1)(A).) The benefit to the child must promote “the well-being of the child to such a degree as to outweigh the well-being the child would gain in a permanent home with new, adoptive parents. In other words, the court balances the strength and quality of the natural parent/child relationship in a tenuous placement against the security and the sense of belonging a new family would confer. If severing the natural parent/child relationship would deprive the child of a substantial, positive emotional attachment such that the child would be greatly harmed, the preference for adoption is overcome and the natural parent’s rights are not terminated.” (In re Autumn H. (1994) 27 Cal.App.4th 567, 575.)

The parent has the burden of establishing the existence of any circumstances which constitute an exception to termination of parental rights. (In re Cristella C. (1992) 6 Cal.App.4th

1363, 1372-1373.) The juvenile court is not required to find termination of parental rights will not be detrimental due to specified circumstances. (*Id.* at p. 1373.) Even frequent and loving contact is not sufficient to establish the benefit exception absent significant, positive emotional attachment between parent and child. (*In re Teneka W.* (1995) 37 Cal.App.4th 721, 728-729; *In re Beatrice M.* (1994) 29 Cal.App.4th 1411, 1418-1419; *In re Brian R.* (1991) 2 Cal.App.4th 904, 924.)

In this case, it is indisputable that an attachment existed between appellant and the minor. On the other hand, the record shows appellant had spent much of his adult life in prison. His incarceration when the minor was 13 months old shows he cannot be counted on to provide the minor with a stable home. In addition, he had not always attended the scheduled visitations, which were only once a month. Moreover, the minor had developed a close relationship with his foster parents. In fact, he sought them out for "comfort and affection." The minor had been with the same foster parents for more than a year.

Section 366.26 requires both a showing of regular contact and a separate showing the child actually would *benefit* from continuing the relationship. *In re Autumn H.*, *supra*, 27 Cal.App.4th 567, interprets the statutory exception to involve a balancing test, and both *Autumn H.*, and *Beatrice M.*, *supra*, 29 Cal.App.4th 1411, posit a high level of parental-type involvement and attachment. Even assuming those decisions overemphasized the necessary showing of the parental

relationship, the record here does not support appellant's assertion the minor would benefit from continuing his relationship with appellant simply because the minor enjoyed his visits with appellant. (Cf. *In re Amanda D.* (1997) 55 Cal.App.4th 813, 821-822.)

Appellant suggests the record establishes the existence of a beneficial relationship between the minor and appellant, precluding a finding of adoptability. The juvenile court was entitled to conclude otherwise. Evidence of a significant attachment by itself does not suffice. Instead, the record must show such benefit to the minor that termination of parental rights would be *detrimental* to him. (§ 366.26, subd. (c)(1)(A).) Here, the court determined appellant's relationship with the minor was not so strong as to make termination a detriment to the minor.

In support of his claims, appellant relies in part on *In re Brandon C.* (1999) 71 Cal.App.4th 1530. There, the juvenile court found it was in the best interests of the minors to establish a guardianship, rather than terminate parental rights, so the minors could maintain their relationship with their mother. (*Id.* at p. 1533.) Affirming, the Court of Appeal held substantial evidence supported the juvenile court's conclusion that terminating parental rights would be detrimental to the minors, since their mother had maintained regular, beneficial visitation with them. (*Id.* at pp. 1533, 1534, 1537, 1538.)

*In re Brandon C.*, *supra*, 71 Cal.App.4th 1530, is distinguishable from the proceedings here. The *In re Brandon C.*

court found ample evidence of benefit to the minors of continued contact with their mother. (*Id.* at pp. 1537, 1538.) Here, by contrast, and contrary to appellant's claim, the record supports the juvenile court's conclusion there would not be sufficient benefit to the minor if the relationship with appellant were continued. As the record shows, the minor's needs for comfort and security were being met by his prospective adoptive parents.

Appellant suggests that, because he maintained a significant parent-child relationship with the minor, which included regular contact, the circumstances of his case differ from those found in other cases. In support of that claim, appellant cites *In re Casey D.* (1999) 70 Cal.App.4th 38. Finding the absence of an "exceptional case" where a beneficial relationship existed precluding adoption, the Court of Appeal in *In re Casey D.* affirmed the order terminating parental rights. (*Id.* at pp. 51, 53, 54.) However, the court in *In re Casey D.* did recognize the possibility of a beneficial relationship existing despite the absence of daily contact between a parent and child. (*Id.* at p. 51.) Moreover, in *Casey D.* the mother was no more than a "friendly visitor" to the minor. (*Id.* at p. 51.)

Here, the issue is as follows: In light of the minor's adoptability, would a continued relationship with appellant benefit the minor to such a degree that it would outweigh the benefit the child would gain in a permanent adoptive home? Substantial evidence in the record supports the juvenile court's answer in the negative.

After it became apparent appellant would not reunify with the minor, the juvenile court had to find an "exceptional situation existed to forego adoption." (*In re Autumn H.*, *supra*, 27 Cal.App.4th at p. 576.) In this case, on the contrary, the court determined the minor would not benefit from continuing his relationship with appellant to such a degree that termination of parental rights would be detrimental to him. Appellant had the burden to demonstrate the statutory exception applied. We conclude appellant failed to make such a showing. Therefore, the court did not err in refusing to apply the statutory exception to adoption or in terminating appellant's parental rights. (*In re Amanda D.*, *supra*, 55 Cal.App.4th at p. 821.)

#### DISPOSITION

The order of the juvenile court terminating appellant's parental rights is affirmed.

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SIMS, Acting P.J.

We concur:

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MORRISON, J.

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KOLKEY, J.